

## 10 *Official Opinions of the Compliance Board 54 (2016)*

### ◆ 2(A) NOTICE, GENERALLY – TIMELINESS OF NOTICE POSTED ON WEBSITE

\*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at [https://www.oag.state.md.us/Opengov/Openmeetings/OMCB\\_Topical\\_Index.pdf](https://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf)

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June 10, 2016

Re: Maryland Statewide Independent Living Council  
Katie Collins-Ihrke, *Complainant*

Complainant Katie Collins-Ihrke alleges that the Maryland Statewide Independent Living Council, a public body of which she is a member, violated the provision of the Open Meetings Act that requires public bodies to give “reasonable advance notice” of their meetings. The Council’s attorney responded on its behalf.

The facts are undisputed: the Council uses its website to post its meeting notices, and, on March 28, 2016, it used that method to post notice of a special meeting on April 1, 2016. Complainant asserts that four days’ notice, when given on a website, is insufficient. The Council, citing opinions in which we addressed notices given on shorter notice by other methods, responds that it needed to call the meeting quickly, that it posted the notice on the day that it scheduled the meeting, and that the notice was adequate under the circumstances.

The Act requires public bodies to provide “reasonable advance notice” of the date, time, and place of their meetings. § 3-302.<sup>1</sup> The Act does not specify how far in advance notice must be given, and “reasonable[ness]” thus depends on the circumstances. We assess “reasonableness” by “whether a public body gives notice of a future meeting as soon as is practicable after it has fixed the date, time, and place of the meeting.” 5 *OMCB Opinions* 139, 143 (2007); *see also* 10 *OMCB Opinions* 9, 10 (2016). When a public body must meet urgently, it must not only give notice as soon as practicable, but also use the best methods feasible under the circumstances. *See* Open

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<sup>1</sup> Statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014, with 2015 supp.).

Meetings Act Manual, Chapter 2 (November 2015) (summarizing our opinions on the notice requirement). For those meetings, we consider whether the public body has ameliorated the lateness of the notice by making extra efforts to inform the media and others who follow its activities. *See* 8 *OMCB Opinions* 76, 80-83 (explaining the Act's timeliness requirement); *see also, e.g.,* 7 *OMCB Opinions* 237, 239 (2011) (noting that sudden schedule changes require the use of more methods than usual). We have cautioned that "a public body that notifies the public of regular meeting dates on a website should not assume that people will continuously check [it]." 7 *OMCB Opinions* at 239.

Applying these principles, we have found that a public body did not post notice reasonably in advance when it knew in October that it would substantially change the location of its December meeting, but did not post the change on its webpage until three days in advance. 10 *OMCB Opinions* at 10. And, we have found that a public body did not give reasonable advance notice when, on a Saturday evening, it used its website alone to post notice of an emergency meeting on Sunday evening. 9 *OMCB Opinions* 110, 114 (2014). Given the shortness of that notice, and the likelihood that reporters and others interested in that public body's work were not checking the public body's website daily and over the weekends, we found that the public body should have used additional methods to contact its followers. *Id.* This matter is not as clear-cut as either of those; here, the Council gave four days' notice, during the week, of a meeting that the public could attend by calling in. Also distinguishable, and not useful here, are our opinions about last-minute notices given by other methods. Notices given on a website are not analogous to notices given by a posting on a town bulletin board or in a newspaper, where special notices may be seen by people who are not watching for them. Moreover, a public body that maintains a website presence and meets by teleconference might not know which members of the public and media follow its activities. Without a known audience to target, an effective alternate method of posting notice might not be obvious.

On this close question and under these circumstances—the posting of notice immediately and four business days in advance—we find that the Council's notice was not so belated as to violate the Act.<sup>2</sup> Still, public bodies that call special meetings on short notice should try to contact members of the public and media who follow their activities. If a member of the public body is concerned that a particular constituency or media representative will

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<sup>2</sup> The complaint did not allege violations with regard to the content of the Council's notices. We see, however, that the Council posts some meetings as "Closed Meetings." If a meeting is subject to the Act and will be closed under § 3-305, the public body must vote in public to close the meeting and must give notice of that open session. Suggested wording for notices of meetings that will be closed but for the initial vote can be found in Chapter 2, § B, of the Open Meetings Act Manual.

not see an online notice of a specially-called meeting, the member might identify them and suggest, to the chair or staff, ways of conveying notice to them.

Open Meetings Compliance Board

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